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REMARKS

OF

MR. PHELPS, OF VERMONT,

ON

THE OREGON BILL,

AND ALSO ON

THE COMPROMISE BILL:

Delivered in the Senate of the United States, June 29 and July 24, 1848.

The Senate resumed, as in Committee of the Whole, the consideration of the bill to establish the territorial government of Oregon.

Mr. PHELPS said:

Mr. PRESIDENT: It was not my purpose, when this debate commenced, to take any part in the discussion of a subject which I had studiously chosen to avoid, as a subject of an irritating, troublesome, and perplexing character. But, sir, I have been induced to change my purpose, in consequence of the course which has been taken in the debate. Doctrines have been advanced, which, in my judgment, are at war with the Constitution. Positions have been taken which I regard as wholly untenable; and claims have been set up in relation to the slaveholding power which I deem it my imperious duty to resist. It is a very important question whether this power, existing as it does in certain portions of the Union, can arrogate to itself a principle of self-extension in defiance of the power of Congress, and in defiance of local legislation. Sir, this pretension is, in my judgment, wholly inadmissible. I had supposed that a proposition so inconsistent with what has heretofore taken place, would not have been advanced. We have heard a good deal of the Missouri compromise. That compromise, if I understand it, fixed upon the line of north latitude 36° 30′ as the line of demarkation between what are called the free and the slave States. I had supposed that, by virtue of that compromise, the territory of the United States north of that line was to be forever exempted from the institution of slavery. But, sir, we are now told, whatever may have been the purport of the compromise, that we possess not the power to exclude slavery from any portion of the territory of the United States. If this position is tenable—if it can be made out that Congress has no power over this subject, as connected with its territorial legislation, then, indeed, the Missouri compromise fails as a compromise, for want of power to make it and want of power to carry it into effect. Sir, I repeat, if this pretension is defensible, which claims

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to exempt this institution from all legislation, and claims for it the right to extend itself over these Territories in defiance of our legislation; if this pretence be well founded, then, indeed, there is no earthly authority that can restrain it.

But, sir, before I admit the justice of this position, I may be permitted to examine the ground on which it is founded. And, in the outset, I deem it utterly immaterial whether the power of Congress over the Territories of the Union is to be derived from the express grant of power in the Constitution to make rules and regulations for the government of the Territories; or whether it be derived from the power which is incident to this Government, because essential to all governments, of acquiring territory by conquest or purchase, which carries with it the right to govern. It has been argued that the express provision of the Constitution extends the legislative power of Congress over these Territories no further than the subject of property is concerned; and that legislation over persons is not included. It is, however, conceded, on the other hand, that it is incidental to this Government to acquire territory, and if the power to acquire territory be admitted, the power to govern is of course involved. But, sir, all this discussion is, in my humble judgment, unimportant. From whatever source the power is derived, it is too late now to deny its existence. It was asserted before the formation of the Constitution. It was not denied or prohibited by the Constitution itself when adopted. It has been exercised from the first existence of the Government down to the present day; scarcely a session of Congress has passed in which the existence of the power has not been recognised in the most emphatic manner—indeed the bill before us assumes the power; and every discussion, every question that is raised in the face of this bill, as to what it is, or what it should be, proceeds upon the same assumption.

Sir, my first position is, that let the power be derived from what source it may, it is a general, an exclusive, and therefore unlimited power. If you attribute the power to the right of acquisition—to the war-making power—to the capacity of the Government to acquire territory, its jurisdiction over it is necessarily unlimited, because no other sovereignty can exist. By the very act of cession which made this territory the property of the United States, all previous sovereign power, all prior legislative power, becomes at once extinct. The power of Congress over these Territories is the only power that can thereafter exist. Well, sir, if it be true that this legislative power over the territory is unqualified and unlimited, and if Congress possess this general legislative power, the only remaining question is, whether this institution is a legitimate subject for the exercise of that power. It has been claimed from the outset, by those who vindicate the institution, that this is a proper subject to be regulated by the local legislature. It is upon this ground, viz: that the subject falls within the exclusive province of State and local legislation, that the slave-

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holding States have denied the power of Congress to interfere with the institution within the States. It is upon this ground, questioned, denied by nobody, that Congress have uniformly disowned and repudiated that power of interference. But the power of local legislation over the Territories is in Congress as absolute and unlimited as the corresponding power is in the State legislature. Nay, if you derive the power of Congress from the faculty of acquisition incident to all governments, it is more absolute and unlimited, because untrammelled by the restrictions of the State constitutions. If this subject be a fit subject for legislation in the one case, it is a fit subject in the other. It seems to me that the conclusion is inevitable—that Congress possesses the same power of legislation upon this subject within the Territories of the Union, that the States do within their own jurisdiction.

I admit that the legislative power of Congress is limited in some respects; I admit that Congress can grant no patent of nobility in these Territories any more than in the States; I admit that the restrictions in the Constitution upon the legislation of Congress are to be observed; but, sir, I ask gentlemen on the other side to point out the restriction in the Constitution which prohibits us from legislating upon this subject. Sir, if the power is not general, if it is not unlimited and exclusive, if any restrictions are imposed upon it by the Constitution of the United States, let those restrictions be pointed out. Let gentlemen refer us to the article, the section, the clause in the Constitution of the United States which interferes in this particular with the general legislative power of Congress. No gentleman has referred us to any portion of that instrument which involves such a doctrine; and I think I may say with confidence, that no gentleman will make the attempt.

But, sir, from what source is this restriction attempted to be derived? Is it from the nature of the subject? Various analogies have been stated to illustrate the position that there is inherent in the subject itself something which involves a restriction upon our action. The Senator from South Carolina asserted that the power was vested in Congress in trust; and he argued from analogy that the power of Congress as trustee was restricted. Sir, the great mistake is, that things are treated as identical which are in their very nature different. I admit that all the powers of Government are held in trust for the benefit of the people, but I do not admit that this trust has any analogy to an ordinary legal trust. The very element of legislative discretion which enters into every grant of political power puts an end at once to the analogy. No two things are wider apart than political power vested in a legislative body, to be exercised in legislative discretion, and a mere legal power vested in a trustee at law, which involves no discretion, whilst the other involves the highest discretionary power known to our system of Government. An argument drawn from an analogy of this sort would be denying to the legislature a discretion in this matter, because a similar discretion is not attached to a legal trustee.

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Equally unfortunate was the Senator's analogy, which he endeavored to derive from a comparison of the common property of the people of these States in their territories to an ordinary partnership. Had the Senator taken the case of a corporation acting by the will of the majority, he would have found a closer analogy. The interest of the people of these States in the Territories is a corporate interest. The Senator from Georgia (Mr. BERRIEN) adopts this analogy, and he cites Vattel to establish the position, that although a corporation may, by vote of the majority, regulate the mode in which each corporator may enjoy his corporate property, it cannot deprive him of that property. He need not have cited authority for a position so obviously just, and one which no one, I trust, is disposed to question. Sir, I shall endeavor to show that this question of the admission of slavery into these Territories is not a question of right, but one which relates to the mode of enjoyment, and in that light is a question of expediency only.

Sir, the argument of the honorable Senator from South Carolina (Mr. CALHOUN) and the honorable Senator from Georgia (Mr. BERRIEN) is in substance this. These Territories, it is said, are the common property of the Union; the citizens of each and every State have equal rights and privileges in relation to them. It is insisted that the citizens of every State have an equal right to emigrate to and dwell in those Territories, and to carry thither and retain their property—that is to say, their slaves. And it is further insisted, that any act of Congress which interferes with this right, and prevents the transfer of this description of property, is a violation of the rights of the slaveholding States, destructive of their interests, and of that equality of right which is assumed to exist. Such a proceeding, it is said, is virtually appropriating the common property of the Union to the use and benefit of one portion of the people to the exclusion of others.

Sir, in every aspect of this argument, and in all its parts, it is fallacious. So far as it is built upon the supposed inequality between those who are assumed to have equal rights, I confess it is beyond my comprehension.

Whatever may be the determination of Congress, whether any restriction is imposed in relation to slavery, or whether it is admitted freely and without restriction, every citizen of the United States stands upon the same footing. If it be admitted, he may either take his slaves there or not, as he pleases. Whatever may be the decision of Congress in regard to this matter, all stand upon the same footing—the rule is uniform. If slaves are admitted, are they not admitted for the benefit of all? And if they are excluded, are they not excluded for the benefit of all?

Although I am not disposed to question the general truth of the proposition upon which the argument rests, to wit, that every citizen has a right to emigrate to the Territories with his property, I am disposed to deny its application. And

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in order to determine how far it is applicable to the question now before us, it becomes necessary to inquire, what is meant by property in slaves. It is property founded upon a domestic relation, and may be compared to the interest which a parent has in the services of his child; and it bears a still closer resemblance to the relation of master and servant; for, let me remark, the Constitution of the United States denominates slaves not as property, but as "persons held to service," which is in my judgment the proper designation. The property which a master has in the services of his slave, if you choose to adopt that language, is the property which the master has in his apprentice. This property, then, is dependent upon a domestic relation, it is incident to it, and can exist nowhere where that domestic relation does not exist. The next inquiry is, whether this domestic relation is a subject of local legislation? The Senator from Georgia asked, with a good deal of emphasis, whether, if a master from a State in the Union, where apprenticeship is recognised, takes his apprentice to a part of the Union where it is not recognised, he will loose the service of his apprentice? I answer, unquestionably, yes. The apprenticeship being subject to the local jurisdiction only, and the local power being as applicable to the relations of master and servant as it is to any other question that can arise in connexion with mere municipal regulations. But there is another principle which stands in the way of the argument of the Senator from Georgia. The Senator must be aware that when he removes with his property into a new jurisdiction, he holds that property subject to the local legislation of such new jurisdiction. Sir, what is the principle which obtains throughout the civilized world upon this very subject? Is it not the common judgment of the whole civilized world, that a slave taken into a jurisdiction where slavery is not recognised becomes *ipso facto* free? Is not this the doctrine of every civilized nation upon earth? And is it not the doctrine that is recognised by every State in the Union? This property is, what? Is it that species of property which is recognised everywhere? No, sir. And here is another difficulty in the argument of honorable gentlemen. When they tell me that citizens of every State have a right to emigrate to the Territories of the United States and hold their property there, I answer, that you may carry such property as is recognised as such everywhere by the common consent of nations and the commercial world, but you cannot carry with you the peculiar regulations of your own country, which create a property that is unknown elsewhere. The Senator from Georgia saw fit to denominate this distinction as a chimera of the imagination. If it is, it has found its way into the imagination and into the jurisprudence, and commended itself to the judgment, of every civilized people. If there be no distinction between this species of property and that kind of property which is recognised everywhere, how happens it that the title of the property is lost by carrying it from one jurisdiction to another? If you carry your merchandise

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from Virginia to New England, it will be recognised there as fully and absolutely as the property of their own people; but if you take those persons who are held in servitude, they recognise no such property, and under that jurisdiction they necessarily become free. If you take your cotton or merchandise of any description to England, your right to it is recognised and protected by the law of nations; any unlawful interference with that property becomes a subject of national discussion, and if unatoned for, a legitimate cause of war. Is it so with this species of property? Will Great Britain admit your right to follow your fugitive slaves there, or will you make it a cause of war if she does not? The Senator from Georgia himself admitted that if a master take his slave into a free State voluntarily, it is a virtual manumission. If you take property then to Oregon, you hold it there subject to the local laws; and if you take persons there whom you call property and they do not, your title is forfeited. This is admitted to be a principle of law by gentlemen of the slaveholding States. I am a little surprised that the Senator from Georgia should have seen fit to bestow upon this distinction, thus recognised in the jurisprudence of the United States, and of every other country, the epithet of a chimera of the imagination.

But sir, what is this property? It is a species of property which is recognised in certain localities only. If it be of that character which is recognised and protected as property by one local legislature, and not protected or recognised by another, is it, or is it not, a proper subject for local arrangement? Its very basis is local; it stands upon that principle, and that alone; and yet we are told that although this is the basis upon which this species of property rests, yet, after all, Congress possessing the exclusive power of legislation over the Territories, has no control over it. But the pretension does not stop here. It is said that the citizens of the slaveholding States have a right to carry their institutions into the Territories of the United States, and that you have no power to prevent it. When this pretension is set up, the question becomes this, not whether citizens of the United States have a right to emigrate to this territory with their property, but whether they have a right to carry with them their peculiar domestic and municipal regulations, and substitute them for the laws which you choose to establish. Such a doctrine would place the slaveholding power above the legislating power. If they have a right to claim exemption within your Territories from the operation of your laws, they may claim a right to follow your armies in your career of conquest, and to plant the standard of slavery upon every inch of the wide domain which your power and your ambition combined may bring under your dominion. Instead of extending the area of freedom, you would carry abroad the standard of slavery; while the slaveholding power, thus stalking in the wake of your victorious armies, and appropriating to itself your successive acquisitions, would render itself co-extensive and

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coeval with the boasted "destinies" of this country. Sir, I solemnly protest against the pretension which tramples legislative power under foot—which sets all human authority at defiance, and arrogates to itself the right to extend its peculiar institutions wherever it chooses to plant its footsteps. Sir, before I admit this doctrine, objectionable as it is to me, and the Senator will permit me to add, offensive as it is to the people of a great portion of this Union, I wish to see the foundation upon which this pretension rests; I desire to see the clause in the Constitution which ties your hands and mine. It is insisted that the Constitution recognises this species of property. How does it recognise it? In the first place, it recognises slaves as persons held to servitude, as persons entitled to representation in these Halls. They are at this moment represented here as a portion of the population of this Union, and yet we are told they are property—mere merchandise. If these people are persons and not property, upon what principle is it contended, that when they emigrate to your Territories they do not go there subject to the laws which prevail there? The fallacy of the argument consists in the denomination that is given to them in supposing them property, such as is recognised by the common judgment of the civilized world. It consists in putting them upon a footing which they ought not to occupy, and which no logic can make them occupy. The Constitution recognises the institution so far as this: it authorizes the recapture of slaves, or, to use the language of the Constitution, "persons held to service." It is a mere recognition of the rights of the master in the State where he resides, and upon whose municipal regulations his rights rest. But how far does this provision go in recognising the right of slavery? It goes no farther than I have mentioned—than simply to authorize the recapture of persons escaping. Suppose the master choose to take his slave into a free State, what becomes of his right? Why, as a Senator from Georgia himself observes, it is a voluntary manumission. I would like to ask the honorable Senator where he finds the provision which authorizes the extension of this institution by its own voluntary act, not only without the sanction, but in defiance of local legislation? This right of recapture is one thing, and the right to transport slaves from one State or territory to another, and plant the institution there, is another thing; and while the honorable Senator claims this right of recapture, he is forced to admit that a voluntary removal to a territory where slavery is not recognised, amounts to manumission. The recognition of the Constitution falls infinitely short of the conclusion to which the honorable Senator comes. He claims the right to plant the seeds of this institution in Oregon. Yes, sir, to plant them everywhere; and while you are extending the "area of freedom," he is covering that "area of freedom" with a cloud of slavery. I repeat the question: In which provision of the Constitution is such a doctrine to be found? In what provision can you find the basis from which such an inference can be drawn?

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Mr. BUTLER.—I would ask the honorable Senator whether he supposes that the mere passing from a slaveholding State, with slaves, *animo revertendi*, would render them free?

Mr. PHELPS.—I hold that the master who takes his slaves into a free jurisdiction, whether it be *animo revertendi* or not, emancipates them; and I hold that this emancipation does not depend upon the will of the master, but rests upon the principle of a change of jurisdiction. The master, by placing himself and his slave in any jurisdiction, subjects himself, his slave, and the relation between them, to the local laws of that jurisdiction. The same result would follow if the slave escapes. In the absence of the constitutional provision for recapture, the fugitive slave, arriving upon the soil where slavery is not recognised, becomes free. This is the doctrine of the English common law. We have been familiar with it from our childhood. I need not repeat the language of the celebrated Ir sh orator, with which all are familiar, to establish the position that the moment a slave sets foot upon the soil of England, the shackles fall.

We have proof of this in a recent transaction. The slaves of the Creole, who mutinied, overpowered their masters, and took refuge in New Providence, were not surrendered by the British Government, but your application was refused. The same thing occurred in the case of the slaves of the Amistad. We refused to regard them as property, and declared them free. This doctrine, I believe, has been sanctioned everywhere wherever there has been any thing like judicial action on the subject. It has been recognised by your own Supreme Court. Sir, I am asked if I approve of this doctrine thus held by the courts. I answer without hesitation, yes; because the converse of that doctrine would place the slave power above all the institutions of this Government. If the converse of this doctrine were to obtain, and the property of the master in his slave were to be recognised everywhere, it would be in the power of the slave-owner, by a simple transfer of what he calls property, to establish the institution in any of the States, in disregard of its laws, and in defiance of the wishes and power of the people. Such a result is too monstrous to be claimed on the one hand, or admitted on the other. The provision of the Constitution for the reclamation of fugitives, so often cited as importing a constitutional recognition of slavery, is itself founded upon the very doctrine for which I contend. Without this doctrine the provision is unnecessary. It is because the relation of master and slave is not recognised, and would not be enforced out of the jurisdiction tolerating slavery, that the provision became necessary. Sir, the doctrine for which I contend is that upon which the whole slaveholding portion of the Union have relied for the protection of their peculiar institutions, and of that species of property which is incident to them. If slaves are to be regarded as mere property—mere merchandise—what shall

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prohibit Congress, in the exercise of its admitted power to regulate commerce, from regulating the traffic among the States? Sir, it is upon this ground, and this only, that slaves are not to be regarded in the light of mere property; that this power on the part of Congress has been resisted; and on this ground, and this only, has the power been disowned.

I find no fault with this provision for the reclamation of fugitives. I am perfectly content that these slaves should be reclaimed. I cheerfully concede to the slaveholding portion of the Union all that they can reasonably demand, and will aid in maintaining their rights as they are recognised by law, and founded in the compromises of the Constitution. But I am unwilling that they should impose this institution upon people by whom it is not desired. As I have already remarked, every person that chooses to emigrate to the Territory of Oregon, can go there with such rights as the local laws recognise. He can claim no other. He can claim no immunity or exemption from the jurisdiction under which he chooses to live. All he can ask is, to stand upon the same footing as his fellow-citizens. But, says the Senator from Georgia, we shall not stand on an equality, because we cannot take our slaves there. But cannot the Territory be occupied, possessed, and enjoyed, without a slave population? Is it indispensably requisite to the enjoyment of Territories of the United States, that we should carry this institution into them? Can they not be peopled, and cannot these new communities grow up and prosper, without the aid of this institution? For the first time, I believe, in my life, I have heard doubts expressed as to the constitutionality and propriety of this prohibition of slavery. Be it constitutional or not, when gentlemen tell me they cannot enjoy their rights without the aid of a slave population, I ask them to look at the territory to which the ordinance of '87 applies, and then tell me whether this institution is so indispensable to the enjoyment of territory. Visit Ohio—that mighty State which is but a few years old—and behold the results of this prohibition of slavery. That, as a civilized community, is hardly as old as my recollection—for I recollect very well when the first considerable emigration to Ohio took place.- They were enabled to occupy that territory, and to lay the solid foundations of the great and growing prosperity of that State, without the aid of a slave population. Will it be pretended that the rights of that people were impugned or violated by excluding this institution? Did they not live there and flourish without it? Can the people of the South, then, not live in Oregon without their slaves? Can they not be as successful without them, as the people of the North have been, in planting their settlements in the West? Is slavery really necessary to the progress of this people?

Let gentlemen compare the present condition of that portion of our Union covered by the ordinance of 1787, with the older States where slavery exists, and they will find the answer. The argument that the exclusion of slavery

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will exclude the people of the slaveholding States from the benefit of the territory, assumes that the territory cannot be peopled, cultivated, and enjoyed without the aid of slave power. If this is not made out the argument fails. If the arts and occupations of civilized life can be established there, and the great ends of the social system and of civil government attained, without the institution of slavery, then the institution is a mode of enjoyment merely, not essential to the rights of the proprietors, and therefore a legitimate subject of regulation by the majority—in other words, of legislation.

You cannot, of course, deny to any of the common proprietors their right to share in the common property; but, certainly, you can regulate the mode in which they can enjoy it. You can make all these regulations which are necessary for the common benefit, and adopt such legislation as may best promote the prosperity and happiness of the whole. If, in the exercise of your judgment, a particular institution stands in the way of the accomplishment of this great object of the common good, you can prohibit it. This question of slavery in the Territories is reduced, then, simply to the mere mode of enjoyment of that which is the property of all. The question of slavery in the Territories thus becomes a legitimate subject of legislative action. It is a mere question of expediency—of sound legislative discretion. I oppose these doctrines to the proposition that we possess no power to arrest the progress of this evil—that we cannot prevent the seed from being planted—that the only power on earth that can interfere is that of the people of the Territories when they come to form a State constitution. Sir, prevention is altogether better than cure. It is easier, as the melancholy experience of the country illustrates, to prevent the introduction of this system, than to eradicate it when once established.

The Senator from Georgia desires that, before the formation of these State constitutions, the slaveholding interest shall be represented there. Sir, I desire no such thing. The extreme difficulty and danger, perhaps I might say the impossibility, of eradicating the institution when once planted, is an insuperable objection. This consideration of the hazard, the peril, of so radical a change in the domestic arrangements of any people, constitutes the great bulwark of slavery at this moment—the only plank upon which the institution stands. Remove it, and the institution is gone. Point out the mode in which it can be abolished consistently with the peace and the security of the slaveholding community, and the whole system sinks under the pressure of the moral sentiment, the principles and the policy of the age in which we live.

Sir, I would not subject the people of the Territories to such imperious necessity. If they are to be the ultimate judges of this matter, leave them an election. Do not impose upon them an institution which, however offensive it may be to them, they may not be able to get rid of if they would.

But the question recurs as to the expediency of the provision in the bill.

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It seems that the people of Oregon have established something like a temporary government for the preservation of peace and order, until the legislation of Congress shall interpose. By these regulations slavery is prohibited, and this bill, as it stands, gives the sanction of Congress to that prohibition. The proposition now is to strike out this provision, which virtually gives effect to the action of the people of Oregon. Honorable Senators have emphatically claimed the right to disregard this prohibition, and plant the institution of slavery in the Territory, in despite of the action of Congress and the wishes of that people. But they have altogether, while pressing their claims, omitted to enumerate the blessings that are to flow from such a procedure. The moral, political, and social blessings that are to spring from this institution in Oregon have not been described. We have not heard a syllable with respect to the aid that the people of Oregon are to derive from this institution in their career of civilization. The high and important influences which slavery is to exercise upon their prosperity and happiness, have not been touched upon. This omission is certainly remarkable. If we are called upon to force this institution upon the people of the territories, let us know at least some of the benefits that are to grow out of it.

Sir, there are many reasons why slavery should not be planted there. The country is not adapted to such an institution. The soil, the climate, the character of the resources of the country, and I may add that of the population likely to occupy it, all forbid its introduction. In what one particular can the people of the Territory be benefitted by extending this institution there? But the question is, whether we shall force this institution upon them? Whatever effect you give to their laws, they may be regarded as expressing their sentiments and wishes. Are you prepared, then, to impose upon the people, who are just laying the foundations of their social fabric, an institution which they have thus solemnly repudiated? The honorable Senator from Georgia says, that all the people of the South desire is, to be let alone. All I ask on behalf of the people of Oregon is, that they should be left free to choose their own institutions. I would not obtrude upon them an institution which is offensive to them.

It is not my purpose to go into a discussion of the merits or demerits of the institution of slavery. I trust I indulge no fanaticism on the subject. I have no desire to display before the Senate its supposed horrors, or to entertain honorable Senators with the thousand and one stories of its atrocities—all doubtless exaggerated, and many utterly false—which constitute the aliment upon which fanaticism feeds. Much less am I disposed to impute it as a reproach to the people of the South that this institution exists. It is an institution inherited from their fathers, entailed upon them, and whether they choose to retain or abandon it, whether it can be got rid of at all, and if so, how, are questions

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which I am willing to leave to the people of the South themselves, as the persons most interested and best qualified to judge. The vindication of the people of the South, by the honorable Senator from Georgia, against the charges alluded to by him was, so far as I am concerned, unnecessary. I am willing to add my testimony, that my observation, so far as it has gone, though it has not been very extensive, sustains all that he said on that point. I have found the condition of the slaves infinitely better than what I had supposed it to be.

But, sir, I choose to deal with this subject, not as a matter of reproach to the people of the South, not as a question of morals, but as a political question of transcendant importance, to be determined by our legislation. In that point of view I regard it, and in that aspect I feel at liberty to discuss it. Sir, I am confident that I speak the sentiments of three-fourths of the people of this country, and of a very great proportion of the people of the slaveholding States, when I say that the institution itself is an evil and a curse. When I say that it is an evil of which they would get rid in a moment if they could do it with safety, I believe I speak the general sentiment of the slaveholding States. Very few men at the present day can be found willing to defend this institution as, in its origin and inception, just or expedient. Who is there at this day, if the institution were not in existence amongst us, who would raise his voice in favor of the introduction of the first colored slave? Who, indeed, would not protest against it, not only as an outrage upon humanity, and as incompatible with the fundamental principles of our institutions, but as introducing a political evil to endure to all generations, increasing in magnitude and in danger, the consequences and the termination of which no human sagacity can foresee. And yet, with this sentiment in relation to the institution pervading our people, we are called upon to extend it. The honorable Senator from Georgia seems to be alarmed at the idea of the institution being pent up in some of the old States. Why should it not be pent up? Where is the necessity of inflicting the institution, if gentleman will pardon the phrase, on territories where it does not now exist? I can conceive of but one consideration which should excite anxiety in this particular, and that is, the accumulation of the slave population, and the necessity of a safety-valve to the increase of that population. If the institution is limited, it is not necessary that the population should be pent up. Admitting the force of this consideration, the question results in this, whether that increase, if it should be thrown off, should be thrown off upon the rest of the world as freemen or slaves. Shall they be sent forth in the character of freemen, to aid in the extension of civilization over our immense territorial domain; or shall they be sent as slaves, extending and perpetuating an institution acknowledged on all hands to be an evil? Will you let these men, created in the likeness of their Maker, go forth free, possessed of all the rights

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and advantages which the God of nature has bestowed upon us all; or will you send them forth as the representatives of this relic of a barbarous age, and the living monuments of the insincerity of your professions? Sir, I am opposed to this extension of an institution which I hold to be utterly at war with the opinions and moral sentiment of the age. The sense of the Christian world, and, I may add, of the civilized world, is universally against it. Shall we set the example of perpetuating and extending an institution which the whole civilized world, with the exception of a portion of our own people, have combined to exterminate?

Sir, I desire to preserve something like consistency in our action. It is but a few weeks since, in this chamber, we passed resolutions of sympathy with the people of France, congratulating them upon the events that have transpired there. We have seen the throne demolished. We have seen aristocratic and hereditary distinctions, sanctioned by time, and venerable for age, abrogated. We have seen the masses rising in their might, and, amid the throes of revolution, prostrating their arbitrary, as they deemed them, tyrannical, and oppressive institutions, and proclaiming the doctrines of universal liberty and political equality. Nay, more, we have seen the shackles stricken from the African, and, as one of the first fruits of the revolution, the whole system of African slavery exterminated at a blow, fully, absolutely, and forever, in all the dominion of the new Republic. And we raised aloud the voice of approbation and of sympathy. Yet, while the resolutions are yet floating to their destination, as if in mockery of our professions, our congratulations, and our sympathy, we are engaged in extending the same system of African slavery over the immense region now subject to our dominion, and preparing the way for its further extension to our future acquisitions. While we are congratulating the world upon the progress of the great principles of human liberty, and the overthrow of ancient despotisms, shall we be called upon to propagate a system of slavery which reduces our fellow-man to the condition of a brute; which converts a being, created originally in the likeness of his Maker, into an article of merchandise, like the beast of the stall? Let us be consistent. Let us prove the sincerity of our professions by our actions.

Sir, I have had occasion heretofore to express my alarm at the spirit of conquest and aggrandizement which has infatuated and debauched the country. Happily, for the present at least, that spirit has been quelled. How long it may slumber, how soon it may awake to covet new acquisitions, how soon it may seek to grasp Canada, or the West Indies, or the remainder of Mexico, time and the dispensations of Providence will disclose. But nothing, certainly, was further from my expectations than to find the Senate of the United States promulgating the doctrine that in our career of conquest, while professing to extend the area of freedom, we are in reality adding to our possessions

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only for the purpose of carrying slavery in our train, and planting this relic of barbarism wherever the stars and stripes may float in triumph.

Sir, I did not intend to detain the Senate so long. This controversy upon the subject of slavery is one which heretofore I have endeavored to avoid. I had cherished the hope that what is called the Missouri compromise might have proved effectual, to some extent, at least, in the settlement of this agitating and troublesome question, and that in the end the threatening storm which still hangs over us might be averted. But if the compromise is to be undermined because the power to make it is denied; if the genius of slavery is to exalt itself above all power; if it is to intrude upon our Territories, without our leave and in defiance of our prohibition, a new issue is made, more difficult than any heretofore presented. If gentlemen are satisfied with the Missouri compromise, perhaps the country may also be satisfied. But if that is to be overthrown, and not only so, but if we are to be told that we can impose no prohibition, prescribe no boundary to this institution, the prospect of the settlement of this question is forever at an end. It can be adjusted and settled only when these arrogant and offensive pretensions are withdrawn.

Sir, I would gladly have remained silent on this subject, but, after listening to the doctrines which have been advanced in this debate, I am driven to enter my solemn protest against them by an imperious sense of duty to myself and my constituency.

[The bill was afterwards referred to a select committee of eight, of which Mr. PHELPS was one. The following is his speech upon the bill reported by them, commonly called "The Compromise Bill."]

MONDAY, JULY 24, 1848.

The Senate having under consideration "The Compromise Bill."—Mr. PHELPS said:

Mr. PRESIDENT: I rise, not to discuss the amendment of the Senator from New Hampshire, but, as a member of the committee who reported the bill, I feel bound to vindicate the measure; more especially as (if I am to judge from present appearances) I shall be almost the only Representative of that section of the North, from which I come, in favor of the bill. It is by no means a pleasant position. It was as a matter of necessity, in the first instance, that I consented to act upon the committee, and to my entire regret I have discovered that the result of our deliberations had met with the most decided—the most vehement—I am strongly tempted to say—the most unreasonable opposition, from the northern section of the Union. This subject of slavery, so much discussed here, has indeed excited the deepest alarm in the mind of every man who is attached to the Union. Long before I had the honor of a seat here, the prediction had gone forth, that if the Union were to be dissolved, it

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would be through the agency of this agitating question. No reflecting man can regard it with other sentiments than those of alarm. No man who desires the perpetuity of this Union, can avoid the strongest anxiety to terminate this excitement, and, if possible, to settle this perplexing and dangerous question forever.

As a member of this committee, I felt that I had a duty to discharge to the whole country. I was not placed on that committee for the purpose merely of representing the peculiar sentiments of the people of my own State. I was placed there to discharge a duty—an imperious duty—which I owed to all sections of the country. I was placed there in order to endeavor to bring to an end the agitation of this subject, at least in this chamber. Under these circumstances, I concurred in the bill which has been presented to the Senate as a proposition of peace. And it is now my object to sustain, if I can, the assertion I made the other day, that on this subject I thought I could vindicate my course to the country at large, and to my own immediate constituents.

The conferences of this committee resulted in a manner surprising to all. It has been said that extremes met here. It is true. The result of our deliberations brought the honorable Senator from South Carolina, and my humble self, who may be regarded as representing the extremes of opinion, into concert. If he and I agree, surely I am justified in asking that our proposition may be considered and discussed in all quarters in the spirit of conciliation. But how is this proposition met? To my surprise and my regret, the whole catalogue of opprobrious epithets has been exhausted in the attempt to heap odium upon this bill. It has been called a "skulking," "dodging," "shrinking," "shuffling," "cowardly" measure! I do not know but the term "dough-face" has been applied to each of its supporters.

Sir, all that the committee ask is a dispassionate and a candid hearing. If the bill do not commend itself to the sound, deliberate, and impartial judgment of the Senate, let it be condemned; we must submit. But I am not disposed to see the bill hunted out of the Senate like a wild beast. I am not disposed to be implicated in the cry of "mad dog," in relation to the subject. The committee are entitled to a candid and rational examination of their work.

What are the objections urged to the measure? The very first proposition, I believe, coming from my honorable friend from Connecticut, (Mr. BALDWIN,) is founded upon the technical objection of a misjoinder—the subject, as we lawyers all know, of special demurrer; yes, mere special demurrer. I regret very much, that in the case of a measure of so great importance—involving considerations of such magnitude, affecting the interests of the whole country, the existence of our institutions and the Union—that we are called upon in the outset to argue it on the nice point of a special demurrer. My friend from New Jersey, also, (Mr. MILLER,) complains that we have united these several bills. But, sir, is there a single provision in this bill relating to Oregon, that applies

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to either of the other Territories? Is there a provision which extends to California, that extends to any other erritory except New Mexico? Where, then, is the force of the objection that the committee incorporated in one bill provisions for three Territories? I can answer the objection in one word. The committee thought it expedient, in order to bring the whole subject before the Senate, and to avoid the manifestation of mutual distrust by a controversy, as to which bill should be acted upon first, to pin together those bills, which were originally separate, and if any gentleman objects to the union, he can, by simply taking his scissors, in one moment remove the objection, by cutting them apart.

Sir, it was but the other day that we had to meet the objection, that a distinction was made between these Territories; and the question was asked by an honorable Senator, "how does it happen that you have distinguished between these Territories, making one provision for Oregon and another for California?" The question is readily answered. I answer it for myself as a member of the committee, in vindication of my own judgment and my own motives as a northern man, hostile to the institution of slavery, and opposed to its further extension. The people of Oregon have already adopted my views and my opinions, in the absolute exclusion of slavery from that Territory. Every consideration which bears upon the subject convinces me that they will hold to the same opinion. There will be no inducement to carry the institution there. Their condition, soil, climate, productions, and pursuits will forbid it; while the sentiments and preconceived opinions of the people who will emigrate thither will be hostile to it. With New Mexico and California the case is widely different. Those Territories are debatable ground. I, for one, was not willing to entrust them with the decision of this grave question; and therefore it was that I would leave the matter to territorial legislation in one case, and not in the other. But while we are called upon on the one side to answer the objection, we are met on the other by the special demurrer of the Senator from Connecticut, upon the ground that we have united in one bill separate and independent provisions for each Territory, which neither control, interfere with, or modify each other.

Mr. Baldwin.—The Senator from Vermont does not seem to apprehend the point of the objection which I made to the union of those bills. The objection was taken, and insisted, on the ground that the people of Oregon were entitled to have their bill considered, irrespective of any objection which might result from any unwillingness on the part of members who were favorable to the bill for the organization of the Territory of Oregon, to vote for those provisions peculiar to New Mexico and California. I desired the bills to be separate, inasmuch as, if the Senate and House of Representatives could not agree upon the provisions for the organization of all these Territories, all would be deprived of

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government, Oregon among the rest; whereas, it standing alone, Oregon might be supplied with a territorial government.

Mr. PHELPS.—I have no doubt that Oregon is content to stand on her own rights, but I do not see how these rights are affected by having the bill providing for her territorial government connected with another measure, providing for the government of another people. It would be in due season to raise this objection, when it is ascertained that such difference of opinion exists in the Senate, as calls for the division of the measures.

But the proposition of the committee has encountered objections of more importance than those relating merely to technical terms. The details of the bill have been misrepresented—grossly misrepresented. It has been described to the country as an odious measure; and I must be permitted to say, that it would seem, from the comments bestowed upon the bill here, that gentlemen had derived their ideas of it rather from the perusal of newspaper paragraphs, than from an examination of the bill itself.

My purpose in addressing the Senate is, in the first place, to vindicate myself against the charges involved in these misrepresentations; and, secondly, to vindicate the bill itself before the Senate and the country. As I have already intimated, the most decided opposition to the measure which has been manifested here has come from my own section of the country. It may be that I stand alone in its vindication, but I trust to be enabled to stand upon my own resources, and shall trust to my own intelligence for my vindication. It is well known that I represent a portion of these States, as decidedly hostile to the institution of slavery as any section of the Union. Ultra I may indeed call the people of that portion of the country, for they have always taken the most decided and strongest ground in opposition to it. I have had occasion heretofore to give expression to their sentiments and my own upon that subject upon this floor. Only a few days ago I expressed those sentiments in a manner, as I believe, not at all misunderstood. I professed my decided hostility to the extension of this institution to any portion of this great country under our legislative control, where it does not already exist. I maintain the same position still; and, standing upon that position, I concurred in the bill reported by this committee. I will add that I will defy the world, with all the ingenuity that can be brought to bear on the subject, and all its demagoguisms, to show that I have abandoned one particle of the principles heretofore maintained by me on this floor, or one iota of the constitutional power necessary to carry those principles out.

I am not about to enter into a lengthened argument, as to the effect of this bill. My views have been already expressed on a former occasion, and they have been reiterated by others, who agree with me upon the legal principles which form the basis of my opinion, as to the effect of the bill. At the same time

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it is necessary briefly to advert to them, in order to show their application to the measure before us. In doing this, I beg gentlemen to understand that my remarks are intended to meet northern objections. My vindication is to be addressed to that quarter in which the charges have been made; and if, in vindicating myself, it should happen that I do not commend the bill to the favorable consideration of southern gentlemen, I have only to say, that, understanding my purpose, they must judge for themselves of the force of what I say, and of the propriety of sustaining a measure which I fear my arguments will not commend much to their favor.

What, then, are the provisions of the bill? What, let me ask, in the first place, is the condition of those provinces? That inquiry has been answered by documents read at the clerk's table this morning. These Territories come to us with an absolute express abolition of this whole system of African slavery. It was exterminated there totally, absolutely, and forever. Such was the condition of things there when they came under our dominion; and such, as I maintain, is their condition still. We have all supposed, until we learned to the contrary from the Senator from New Jersey this morning, that by the law of nations—the law of the civilized world—the law of equity, and humanity, and of common justice, the municipal regulations of a conquered or ceded territory, so far as they are connected with private rights, and the rights of property, remain in force until changed by the legislation of the conquering power. It requires no argument to establish that proposition. The question, indeed, becomes this: Does the cession of a territory, (or its conquest, if you please to use the term,) disorganize and destroy the whole social system? Does it abrogate all civilized association; and is every individual of such a territory upon occasion of its cession, growing out of conquest or otherwise, turned out of the pale of civilization? Does all security for life, or liberty, or property, cease? Is the title to all property vacated? Is crime legalized, if such an expression can be used where there is no law? And can every crime known to the category of human depravity be perpetrated without the power to prevent, or the power to punish? If not—if society can hold together under a cession, it follows that the ligaments which hold it together remain in force until they are destroyed by a superior power.

Mr. MILLER.—I hold that they do, until altered by the conquering power; and that when you establish a government there, you abrogate the previously existing laws, which are inconsistent with the laws which you establish.

Mr. PHELPS.—Unquestionably. I will not differ with the honorable Senator on that point. So far as the laws of the conqueror, which are extended to the province, come in conflict with previously existing laws, the latter are abrogated. There is no doubt of that. But the general principle is what I contend for, and I am very happy to find that the Senator from New Jersey concurs

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with us on that point. We have had several arguments on that subject. I had myself the honor of addressing the Senate on that very point, and I believe I was fully sustained by the honorable Senator from Connecticut, (Mr. BALDWIN,) who preceded me; the honorable Senator from Massachusetts, (Mr. DAVIS,) not now present; and the Senators from Maryland, (Mr. JOHNSON,) and New York, (Mr. DIX,) and from Maine, (Mr. HAMLIN). Indeed, I believe, with respect to this principle thus advanced, there is not, after the explanation of my friend, who sits behind me, (Mr. MILLER), a difference of opinion any where. If these laws, then, are to be retained, what is the result? Here is an express law prohibiting the institution of slavery, and if it is to remain in force undisturbed by us, I ask honorable Senators, where do they find the door open for the introduction of slavery? I have not stopped to cite authorities. I believed it to be unnecessary. Authority enough can be cited. The most emphatic declarations of the Supreme Court of the United States serve to settle this point. This position, that the law of the ceded or conquered territory remains in force until altered by the conquering or succeeding power, is now, I believe, the received and acknowledged law of the civilized world, and is questioned by no competent lawyer.

The next principle upon which I rely is equally well settled, and is, I believe, controverted by nobody—that a slave taken from a community in which the institution is recognised, into a community where it does not exist, becomes by the transition free.

Mr. BALDWIN.—The Senator from Georgia I understand to deny the position.

Mr. PHELPS.—I did not so understand the Senator from Georgia. He says that the Constitution of the United States places this upon a different footing. That position I shall advert to presently.

Well, thus far, I believe, there has been a concurrence on both sides of the chamber. If I desired a judicial concurrence, I have only to go to Louisiana, the very centre of the slave population, where I find decisions going as far as any to sustain me on this point. The people of Louisiana, deeply interested as they are in this species of property, with every inducement on earth to bias their judgment, through their judicial tribunals concede this doctrine. I think, then, that I am relieved from the necessity of all argument on this subject. Now, after having advanced this argument to the Senate, and found myself sustained fully and absolutely by gentlemen on all sides around me, I am somewhat surprised when I am told that this bill carries the institution of slavery into these Territories, and puts an eternal prohibition upon its exclusion there. Upon what principle is such an assertion made? I listened to the arguments of the Senators from New Hampshire and Maine, and found that they concurred with me fully, as they travelled over the road along which I had jour-

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neyed, but found, to my utter astonishment, that when they had come to the conclusion of the whole matter, they had, unaccountably to me, shot off in an unexpected direction. How do these gentlemen make out that this bill carries slavery into these Territories? Is that the legitimate result of the doctrines which I have stated? How do gentlemen prove that, in carrying out these doctrines to their legitimate conclusion, I have abandoned my former professions, and subjected myself to the charge of having concurred in "a dodging, skulking, evasive bill, with a cowardly visage"?

Sir, if I were to give a definition of a coward in relation to this matter, I should define it to be one who abandons his principles for fear of popular clamor; I should define it to be one who departs from his own convictions, lest some body who does understand the subject, or who does not choose to understand it, might raise a cry of disapprobation in some quarter; I should define it to be one who avails himself of the excitement upon this subject, and through its aid secures election to office. The man who acts the part of a political weather-cock, by indicating the slightest whiffle in the political wind, trembles at the least indication of popular excitement, and is paralyzed by an opinion which floats to him upon the atmosphere of some bar-room discussion.

I know not what other men may think on the subject, but, in the discharge of my duty here, if I thought I could depart one iota from the doctrines which I have advanced, with a view to effect a decision at the ballot box, my own constituents would, in their deliberate judgment, administer a rebuke never to be forgotten. I know them too well to imagine that they will ever find fault with a strict adherence to duty, on this or any other subject, upon the part of their representatives. I have no hesitation in trusting my reputation, my standing, and my political existence, to the deliberate judgment of that people. But I never will jeopardize their integrity or my own, by yielding to a momentary impulse, which may mislead them as it has misled others.

To return to the course of argument which I was pursuing. What are the provisions of this bill in relation to Oregon? The people inhabiting that Territory, from the necessity of the case, have adopted what they call provisional laws; they are subject to our control. For the present, we give validity to these laws by our approbation. Now, these laws exclude the institution of slavery entirely from that Territory. But it is said that we have provided for a legislative power which may alter them with our consent. How could we do otherwise? But here a plea in abatement is put in. It is said that we have provided that the laws shall remain in force for three months after the commencement of the first session of that Territorial legislature. Suppose they choose to continue those laws in force? They may re-enact them. But, say the gentlemen, you should have provided that the law should remain in force unless repealed. What difference does it make? If we suppose the legisla-

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ture of that Territory competent to re-enact those laws, why, they are competent to repeal them, and *e converso;* if competent to repeal, they are competent to re-enact; and I do not know that the difference is very important between providing "Be it enacted, that a certain law passed so and so, shall remain in force until the future action of the legislature," and providing "Be it enacted, that such a law shall be in force no longer, unless it shall be the pleasure of the legislature to continue it." I think the power to do one thing is competent to do the other. It is the most immaterial thing in the world, in my judgment, and before I would hazard the peace of the country, and jeopardize these bills on a distinction like that, throwing these Territories out of the protection of law, I can only say, that I would select to stultify myself in some other manner.

But there is another view of the subject more worthy, in my judgment, of the consideration of the Senate. I approve of this provision, because I know the people of Oregon to be of my way of thinking. Having expressed their views, and believing, without doubt or hesitation, that such would continue to be the views of that people, I was willing to say to them, go on and exclude this institution, as I would if I were among you. I suppose this concession to a people whose opinions have already been expressed on this subject, and whose adherence to them hereafter cannot be doubted, is to be regarded as "dodging and skulking" this question. No man from the South has the least expectation that slavery will ever get into Oregon. Every consideration forbids it. Now, whether the territorial government continue the law in force, according to the plan of this bill by re-enactment, or we leave it as the bill stood when printed, in force until repealed, in either event the matter is subject to our control, for they can do neither the one thing nor the other without our consent. And I take the liberty to add, without anything of the kind having been expressed to me, that if the people of Oregon, at the meeting of their legislature, should perpetuate this law, southern gentlemen would not withhold their acquiescence. They would make no question about it. We had no controversy about Oregon in the committee. It was conceded as free territory. We were all of one mind, and it would be extremely unfortunate if this criticism of the bill should destroy a measure upon which, in that committee, composed of the ultraisms on this subject, all were so well agreed. I care nothing about this restriction of three months, and for the reason which I have mentioned. If they choose to perpetuate the law, I give them my sanction. There is no ground to apprehend that there will be any controversy about it.

The question now arises with respect to the other Territories, New Mexico and California. Why do we put them upon a different footing? The answer is easy. We thought that the people of Oregon could be entrusted with the elective franchise. But we were not justified in extending that degree of confidence to the population of New Mexico and California. In this point of

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view, I believe that the Senate will concur with me. An elective government in Oregon is nothing more nor less than the exercise of the elective franchise by our own people, brought up and instructed under our institutions. The exercise of that franchise by the mongrel population of New Mexico and California, would be as broad a farce as could be enacted. Hence we made the difference. The question then was, how we could organize a government for these Territories without involving ourselves in this question of slavery. After having rejected the idea of an elective legislature there, it was proposed to organize a government on what is called the primitive plan—consisting of a governor and judges, appointed by the President of the United States. As a northern man, I objected to that proposition, without a restriction upon the introduction of slavery. I was not in favor of removing this great question from the hands and control of the Senate. I was not disposed to send the power adrift, to seek lodgings in some tenement about this city. I was not disposed to suffer it to take refuge with these appointees of the President. What was the result of my objection? A prohibition was included in the bill, restraining these temporary governments from enacting laws on this subject of slavery; and now, to my utter astonishment, I am told that I have concurred in a measure which perpetuates slavery in those countries. How so? Why, says the honorable Senator from Maine, you have prohibited these men from excluding it. I suppose we all agreed that it is not there now, and that it could not be brought there without legislation; and, in the simplicity of my heart, and the simplicity of my intellect, I supposed that if a local regulation were already made which forbade the institution, and that regulation were left in force, the institution would be effectually excluded. My idea of the matter is simply this: that the institution being already excluded, if you forbade any change of the law, it really was excluded forever.

This is one of the objections going the rounds of the newspapers, and on account of which the committee is threatened with "burning in effigy." We of New England have been accused of not only selling our constituents, but ourselves, to perpetual disgrace, and all because we happened to believe in the old Yankee maxim of letting well enough alone.

What more do gentlemen require than is given in this bill? I claim that, judging by their own platform, no fault can be found with it. If they demand an express prohibition of slavery, here is a local law now existing there, prohibiting the institution—a law which we recognise and affirm. Why add another law? Could you in that way make the prohibition any stronger? It would be a work of supererogation. The committee might have decided upon the Wilmot proviso; and, if we had succeeded in introducing it into this bill, does any man suppose that we would have thereby changed the opinion or vote of any man upon this floor? No, sir; the Wilmot proviso cannot be carried here.

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If I am right in these views, (and southern gentlemen can judge whether I am or not—they are aware I am addressing myself to objectors who agree with me in the general principles I advance,) I ask why should I have entered into an idle contest about a punctilio? For, with these views, the Wilmot proviso is nothing but a punctilio. Its object is effected by other means.

I pass now to the judicial power of the bill. And here, sir, permit me to advert to another objection, which has gone abroad in regard to this bill, equally unfounded. It has been said that this bill refers the matter to the Supreme Court, and that we have endeavored to escape responsibility by throwing our duty upon them. No greater mistake can be made. The bill refers nothing to that court which falls within the constitutional power of Congress, nor any thing which does not belong to them independently of our action. This subject presents itself in two aspects. First, as a legislative question. Congress possessing the exclusive power of legislation over these Territories, the question is first presented to us as one of legislation merely. What law should be passed on this subject of slavery? Shall it be admitted or prohibited? These questions must be settled by us in our discretion. They cannot be referred to the Supreme Court. The bill does not profess to do so. But, as I have endeavored to prove, we have settled this matter, so far as our legislation can settle it, against the introduction of slavery.

First, in regard to Oregon, by continuing their laws in force for the present, and leaving the matter to their legislation in future, with a negative upon their action in Congress, which will prevent the introduction of slavery without our assent. It is agreed on all hands that slavery cannot exist without a positive law allowing it. Should they be disposed to enact such a law, which no one supposes will ever be the case, we have a control over it.

Secondly, in regard to New Mexico and California, by leaving their present law excluding slavery in force, and prohibiting the territorial legislature from changing it. This is all which can be done. To add a prohibition of our own would add nothing, because, first, we already sanction the exclusion; and, secondly, if we did, a subsequent Congress might repeal it. We have done all which we can do.

In the positions on which these results are founded, all gentlemen on both sides agree with me. I will repeat them:

1. Slavery exists only by force of positive law in its favor.

2. There is now no law in those provinces allowing it, but it has been expressly abolished there.

3. The law of those provinces remains in force until changed by the legislation of the United States.

4. The bill prohibits the territorial legislature from changing it.

5. I may add that if Congress enact now an express prohibition, it adds no

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thing to the existing prohibition, and might be repealed by any subsequent Congress.

What more, then, can be done in the way of legislation than this bill proposes? I have said that I believe all agree in these positions. I believe neither the Senator from Georgia, (Mr. BERRIEN,) nor the Senator from South Carolina, (Mr. CALHOUN,) deny them. What, then, do those gentlemen insist upon, and what is the judicial question which is alluded to? I understand those gentlemen to insist that the Constitution guarantees to the people of the slave States their property in slaves; and that, by force of the Constitution, they are equally protected in that property in the Territories if they choose to migrate there with it. This question is purely a judicial question. If such be the true interpretation and meaning and effect of the Constitution, how can any act of Congress change it? Can we repeal the Constitution? And if a question arises as to the construction of that instrument, does it not belong to the Supreme Court to determine it? How, then, can it be said that we refer to that tribunal a question which belongs to it by the Constitution, and which we cannot take from them if we would?

What, then, does this bill provide in relation to the judicial power of the Territories? That power must be given to them, for every gentleman will perceive that restrictions upon the judicial power, in relation to this subject, would render the arrangement nugatory and good for nothing. If this question arises, it must be acted upon judicially, and a restriction upon the judiciary of the Territory would render the whole inoperative. But I was no more willing to trust the judicial power than I was to trust the legislative power, most especially as it was composed of the same persons.

The question then arose, what shall be done? And here let me inquire what is the question that is to go to the Judiciary? It is the question arising under the Constitution, for that is the claim of southern gentlemen. All that was necessary, then, was to provide for an appeal which would bring this subject directly before the Supreme Court as the constitutional expounders of that instrument. Is there any skulking or dodging here? If I were at liberty to detail what took place in committee, I believe, that for one I should be exonerated from the charge of dodging in reference to this matter. But I say here, as I said there, if there be a constitutional question in the case, I am willing to leave its decision to the constitutional authorities. I cannot repudiate them. Shall we distrust the co-ordinate department of the Government? I may distrust the President. He was not elected by my vote; but while he is in office as a co-ordinate department of the Government, he is entitled to my confidence as a legislator, so far as the Constitution submits any matter to his constitutional control. How is it with the Supreme Court? Shall I distrust them? Shall I refuse to submit the matter to their decision? I belong to a class of

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politicians who have uniformly asserted the supremacy of that court, and I must confess that I have been greatly surprised to find Whigs of the North disowning or distrusting its constitutional authority. I have yet to learn, either from political friends or political opponents, that that court has in any degree forfeited the confidence of the country. In the integrity and capacity of that court I have equal confidence. Who doubts the integrity or the learning of the distinguished Chief Justice? And who is prepared to say that that court has become so degenerate, and is filled with such unworthy men, that it is not to be trusted with the power conferred upon it by the Constitution? I can preach no such heresy, and I am perfectly willing to leave this as a constitutional question to that court. If the court decide against me, I will submit. If we cannot trust the power there, where, in heaven's name, shall we repose it? To what earthly tribunal will gentlemen refer the question? I might take it home to a Whig caucus in the State of Vermont, but their decision would hardly bind the people of the South. We may decide it here, but to what would our decision amount? My friend from New Jersey seems to think that the country would acquiesce in the decision of Congress, though not in the decision of the Supreme Court. Does experience sustain the Senator in that view? Did the people acquiesce in the decision upon the tariff of '42? Did not the people, instead of acquiescing, take the liberty of changing their legislators, and abolish that tariff? I hope my friend from New Jersey does not consider us estopped from finding fault with that last legislation.

There is one point upon which I forbear any remark, except to say, that if there be any question as to the practicability under this bill of carrying the subject to the Supreme Court, let the bill be amended. I have been informed that some gentlemen, with the view of closing this whole controversy on this point, will prepare an amendment removing this objection. It is not necessary, then, to argue that point. But the bill has been most grossly misrepresented. We are told that we propose to abandon our legislative control over the subject—to call on some other department of the Government to act for us, and take the responsibility from our shoulders. What portion of the bill justifies that charge? Where will gentlemen find the proposition to commit this subject, as a legislative question, to the judges of the Supreme Court? I should be loath to believe that any Senator upon this floor could imagine that such would be the effect of this bill. What do you propose to refer to the Supreme Court? Nothing, as a matter of reference. We simply leave that court to exercise its constitutional functions of determining this constitutional question. We leave the power in their hands just where the Constitution placed it, and we do so because we are not competent to withdraw it. Does not the bill place the subject where no legislation but that of Congress can bear on it, and provide for

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the decision of any constitutional question which may lie beyond legislation, by the very authority appointed by the Constitution itself for that purpose?

Sir, what would gentlemen have? Will they go for the Wilmot proviso? Will they go for the ordinance of '87? Suppose we enact them in this bill. And suppose the court should decide, after all, that there was a constitutional guarantee as insisted on by my friends from the South in relation to this species of property, and that our provision is unconstitutional. Suppose, further, that we extend the ordinance of '87 over these Territories, and that the moment they become States they repeal it, and the question goes to the Supreme Court, whether our ordinance was binding upon that people: How is my friend from New Jersey, in that case, to withdraw the subject from the Supreme Court? Will he call upon them to relinquish that power? Does not every gentleman see that we have left the subject where we must leave it, and that there is no "evasion" here?

Mr. MILLER.—The Senator has misunderstood my argument. This bill will present the case to the Supreme Court without being accompanied by an act of Congress. I do not deny the right of the Supreme Court to decide upon the legislation of Congress, but if the bill be accompanied by an act of Congress the Supreme Court may, in its decision, say, that according to the Constitution, there being no act of Congress inhibiting slavery, slavery may be established in the Territories, but if Congress acted on the subject, having power to do so, slavery must be prohibited.

Mr. PHELPS.—I was aware that the Senator made that distinction. But suppose both he and I are right, that this act of Congress virtually leaves in force the law of Mexico, is not that a legislative act on the part of Congress on the subject? If the question comes before the Supreme Court, they are informed that, when these Territories came into the Union, they came in with such laws, and that Congress left them in force. Will not the court regard the act of Congress as a legislative determination on the matter; and how can the gentleman distinguish between our action negatively and our action positively? Suppose a bill introduced here to prohibit slavery in these Territories, would the action of Congress add any different constitutional phrase to the question? The Senator from Maine told us that every school-boy in the country knows that the Supreme Court cannot settle a political question. Sir, call it a political question, or what you please, have I not shown that the legislative power is exhausted, in providing that the local law shall not be repealed; and if the constitution overrides that legislation and abrogates that law, how can we remedy the mischief? What power is there in this country, that can decide the question of the constitutionality of an act of Congress, unless it be the Supreme Court? No other. The only alternative is to repudiate the authority.

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of that tribunal. But, in that case, we must deny the authority of the instrument itself, if we deny the power delegated by it.

But it is asked by other Senators why *we* did not settle this question. My friend from New Jersey, has told us this morning, that the committee was raised to settle this difficult constitutional question. I beg leave to say, that, if I had supposed that I was placed on that committee with that view, I would never have troubled the committee with my presence. What, sir, a committee of the Senate raised to decide a mere judicial question, and one upon which the opinion of every member was doubtless deliberately formed! The committee was raised for the purpose of relieving the Senate from the embarrassment in which it had been placed. But to my northern friends, who ask this question, I say, that we *have* decided it as a legislative question, involving the expediency of introducing this institution into those Territories, in exact conformity to their principles and mine. If, then, they believe with me in the result to which I come, why ask me why we did not settle this question? I think we have settled it for the time being, so far as legislation can settle it. But we cannot tie the hands of another Congress, or bind the supreme judicial tribunal. How, then, can it be objected to the bill, that it settles nothing?

Other objections have been urged; and in the course of a very eloquent speech by the Senator from Maine, we were told that this compromise is all on one side. I do not know but the Senator is right. I take the liberty of reminding the Senator, however, that if it be all on one side, he or I are the last men that ought to complain of it. If it meet the approbation of our southern friends, I, for one, have too much good sense to say, that I have made too good a bargain; this is an objection not often heard in our part of the country. But the Senator from Connecticut asked, where is the compromise? The compromise consists in this: the people of the South concede to us that we may let the territorial law stand as it is, and we concede to them that, if they have any constitutional rights affected by the action of this body, they may appeal to the constitutional tribunals for the ascertainment of those rights; in short, they yield to us the matter of legislation, and concede that we may enact such laws as we think exclude slavery from these Territories, reserving to themselves (what we cannot deprive them of) the right to test, before the constitutional tribunal, the constitutionality of those laws.

Another objection to the bill is, that the law will not be carried out—that slavery will be introduced in despite of law; that the question of freedom could not be brought before the judicial tribunals, as the slave would be ignorant of his rights, and also unable to enforce them.

To these objections my answer is a very short one. If the law is not to be regarded, of what consequence is it what that law is? Will the Wilmot pro-

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viso, or the ordinance of '87, be any better, if they are not regarded? Will the slave be any better informed, or better able to enforce his rights, under one form of law, which gives him freedom, than another? What kind of law will gentlemen enact, if they assume before hand that their laws will not be enforced?

Sir, if the honorable Senator from Maine thinks as I do, that the institution is now excluded, surely he will not complain that the subject is left where it is. Does he wish to change the state of things of which he approves? If it stands on a better footing than we can put it upon, by an unsuccessful attempt at the Wilmot proviso, then by all means let it remain. But almost in the same breath in which the Senator charges us with doing nothing, he charges us with declaring that slavery shall not be prohibited, because we do not suffer the territorial legislature to act. If this were original with the Senator, I should think it entitled to more consideration, but it comes from various quarters. We are admonished by the gentlemen of the press of our monstrous dereliction of duty, while none of them can give you an accurate account of the provisions and effect of the bill. Sir, we have had a great deal of declamation upon the subject. Gentlemen do not seem able, although the bill is open to their inspection, to point out its defects, or to show us how it tolerates slavery. An important argument as to the effect of the bill, an argument which goes to explain its legal import and effect, is denominated sophistry. The very gentlemen who bestowed the epithet upon it, have repeated my argument word for word, and if there be sophistry, then the paternity lies with them. They have agreed with me almost entirely, and yet there is something in the bill which their astuteness has not enabled them to discover, but which requires sophistry to conceal. Now, sir, I put the question, where have we dodged, or endeavored to shuffle off the question. Suppose we had recommended to the Senate not to act upon it either way, but to defer it to a more favorable opportunity, it might have been said, that there was a shuffling off of the question. But I ask, where is the shuffling, where is the skulking, in relation to it? I believe I am about the last man to be charged with skulking, for, judging from present appearances, I am standing alone among the Whigs of the North, in my vindication of this measure, and am perhaps rendering myself obnoxious to all the Whig party in the North. Sir, I know the agitation of the question that is going on; I know how a man may become obnoxious to public feeling, under the excited sensibility of that feeling. Sir, I know the opprobrious epithets that may be applied; I may be hung or burnt in effigy; but, sir, having formed my opinion of the propriety of the measure, and of the expediency of adopting it, it is my duty to stand here and vindicate those opinions, let the opinions or feelings of my friends at the North be what they may. I do not "skulk," and I tell gentlemen that, al-

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though the arts of the demagogue are to be put in operation, I shall never shrink from the vindication of my own honest convictions here or elsewhere.

But what could the committee do? Here is a very important question, the most troublesome, dangerous, alarming question that has arisen since the Government was established—a question more difficult of adjustment, pregnant with greater danger to our institutions, with greater danger to the harmony and prosperity of this country, than any question which has heretofore arisen, or is likely hereafter to arise. Sir, the committee have proposed the only measure which their ingenuity could devise; and if their proposition is not satisfactory, let me ask gentlemen who object to it, what it is that they would propose? It is an easy matter to find fault. Nothing was ever done right in the estimation of all. The world itself, and man its inhabitant, were made wrong, in the opinion of some modern philanthropists; but it is well for us they have not the power of making it over again. But let me conjure gentlemen who find fault to inform us what proposition they would present. Let them tell us what is to be done. If this measure is not palatable to them, what do they propose? Sir, we have the Missouri compromise, will these gentlemen go for it? Will the Senators, either of them, go for it? Will the Senator from New Jersey go for it? They answer, no. If they will not sustain it, will they censure the committee for not recommending what they condemn? Will they censure me for not proposing a compromise against which both they and I are committed?

Well, what else is there? The Wilmot proviso. These gentlemen will go for that. So will I. I am not behind them on that subject. But will a majority of the Senate do so? I knew, and every member of the committee knew, that if we met this question upon the ground of the Wilmot proviso, we would be voted down, and it was not my disposition to present the question to the Senate in such a form that it could not fail to be decided against me. It is not my purpose, in carrying out the principles and views of my constituents, to make up an issue in my case, which I know must be decided against me. I may be permitted, I hope, to borrow something from my personal experience. If I were about to present a case before a judge whose capacity I distrusted, or a jury in whom I had no confidence, I should feel at liberty to save my case if I could by moving for a continuance, or by changing the mere form of the issue. Knowing that the Senate could not be brought to carry out my purpose in that form, I felt at liberty to attain my object in another way, and at the same time to obtain an arrangement altogether more satisfactory to the advocates of freedom than an unfavorable decision upon the Wilmot proviso. The proposition of the committee is the only one which has been presented which affords the slightest chance of an adjustment of this matter, even for the present. I should be gratified if any gentleman of the Senate could propose anything more satisfactory. The purpose of the committee was, to extricate Con-

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gress from the difficulty in which we were placed in regard to this subject. I am well aware of the effect its agitation is likely to have throughout the country. It is a very convenient electioneering topic. My own sentiments are known; I am hostile to the institution of slavery, but I trust that my hostility is to be regulated by national and constitutional views; but my sentiments shall not be degraded by being applied to this wretched business of demagoguism or popular excitement. I caution gentlemen on this subject. Gunpowder is a very good thing to fight with, but it is dangerous to explode too much of it at once. Popular excitement is not a matter to be trifled with in this country, or in any other. All experience shows us the danger of tampering with popular feeling. There is not a page in history, from the creation to the present day, more pregnant with warning than the page that is now being enacted. There is inquietude, restlessness, desire for change pervading every portion of the world. We have seen the wheels of revolution revolving in Europe, and can any one tell when those wheels will stop, or who is the last victim that shall be crushed beneath them? It is but a few days ago that we were congratulating a people upon their success thus far in the course of revolution. An individual, who had spent his life over his books, unknown to the political world, sprung into political existence in a moment as the presiding officer of the Provisional Government of one of the most powerful and most restless people in the world; and, sir, our congratulations had hardly reached him before the revolutionary wheel, which bore him triumphantly to the top, threw him from his high position into comparative insignificance and obscurity. Where will this movement, now proceeding with such tremendous power, terminate? There is but one intelligence which can predict its termination, and but one power that can control its results, and that power is not a human power. We are following in the footsteps of our fellow men in the old world; popular excitement and popular violence are not unknown in our own country. The man who endeavors to carry this excitement to extremes, and to alienate the feelings of this people from each other, to the danger and perhaps destruction of our institutions, should be careful to ascertain whether he can control the tempest upon which he attempts to ride. The history of the old world shows that the demagogue who puts in motion the passions of men, and drives them to anarchy and bloodshed, deposits his bones at last in one undistinguishable mass with those of his victims. And in this more peaceful hemisphere, which revolution and anarchy have not yet reached, the political agitator who rises upon a whirlwind of excitement finds, to say the least of him, an early political grave.

Sir, I have no particular anxiety on this subject because of any peculiar interest I may have in the agitations of the day. I know there is a disposition on the part of some to make what is called political capital, by operating upon

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the feelings of the masses. How far they may be successful in this case is not for me to say. They are, I suppose, tired of old associations, and are seeking about for something new. A new political church has recently been formed, which may serve as a sort of city of refuge to unfortunate politicians, but I know enough of the people of the North to know that, although they may be thus played upon for the moment, yet I have sufficient confidence in their discretion, integrity, and sound judgment to believe that all this excitement will be but temporary. That they will not look upon it in the end with sober discretion at least, I have no fear. Sir, I do not intend to say that their sentiments on the subject of slavery will change, but I do intend to say that the excitement got up by mistaken representations of this bill, will subside—that they will in the end do the bill and do me justice; and that they will content themselves with a rational opposition to the institution, without throwing themselves into the hands of the demagogue, or forming sectional distinctions which may endanger the stability of the Union. I have only to add that I shall not contribute to the production of a dangerous excitement which may tend to disturb the harmony of the Union.

I have thus expressed my views on the subject, because I have felt myself somewhat implicated. If this bill carry on its face a cowardly aspect, its authors are responsible for that aspect. But the epithet "cowardly," would be more applicable to those who watch with trembling anxiety the political vane, the turning and eddying of popular impulse—who waver in the discharge of their duty, lest an honest adherence to the dictates of their own judgments and their own consciences should expose them to a groundless censure from their political enemies, or, what is worse, to the treachery of political friends, and who are paralyzed by the slightest breath of popular disapprobation, grounded upon opinions formed without sufficient information—hotly conceived and hastily expressed.

Upon this subject I may be permitted to add another consideration. I am not responsible for bringing this agitating question upon the country. It came here by no agency of mine. The responsibility lies elsewhere. It originated in the measure of the annexation of Texas. From that measure followed the Mexican war, from that war followed this conquest, and from the conquest follows this agitating and troublesome question. I am not responsible for the origin of this difficulty, but there are men on this floor who are. The Senator from Connecticut over the way, who has so liberally bestowed his denunciations upon this bill, I believe gave a casting vote in favor of that annexation. Whether he represented the opinions of his constituents on that occasion, whether he stood in awe of their instructions, whether he was in dread of their vengeance in the shape of burning in effigy, it is not for me to say. Whether it was so or not, his casting vote determined the momentous question; that cast-

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ing vote brought upon us the difficulties with which we are now surrounded. Sir, if that honorable Senator, instead of bestowing these wholesale epithets of reproval upon the committee and the bill, instead of expressing his dissatisfaction in terms so offensive, had united with his former friends in bringing about a settlement of the question which he and they have brought upon us, it would have been a little more satisfactory. I call upon the Senator from Connecticut, as the man responsible for the existence of this difficulty, to put his shoulder to the wheel, and as he went with the honorable Senator from South Carolina and his friends on a former occasion, let him unite with those gentlemen now upon some terms of compromise or adjustment. Sir, if this subject is to be made a subject of popular excitement, and my name is to be bandied about in connexion with it as an object of reproach, or if my old coat and jacket are to be stuffed with straw and burnt, I confess under these circumstances I prefer that the man who brought about this state of things, if he cannot take my place, should at least furnish his old coat and jacket to add to the conflagration. It required no great foresight to predict these consequences at the time of that annexation. We are now where we expected to be when we protested against it. We were driven into the measure and its consequences by some of our northern friends, whose fate it has been to stand pretty much on that occasion where I am now, alone. As they forced us into it, for Heaven's sake let them be generous enough to unite with us now in endeavoring to extricate us from the difficulty.

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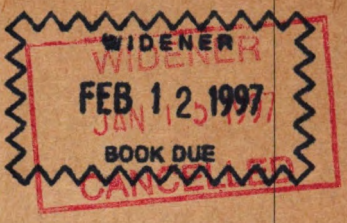

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